

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Theodore Stewart-Franzen	Team: Team # 4	CCRB Case #: 200412795	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Friday, 12/24/2004 4:30 PM	Location of Incident: Norfolk Street & Delancey Street, Manhattan	Precinct: 07	18 Mo. SOL 6/24/2006	EO SOL 6/24/2006	
Date/Time CV Reported Fri, 12/24/2004 8:43 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Fri, 12/24/2004 8:43 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Benjamin Cui	26367	932505	007 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Steven Hong	30781	932800	007 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Benjamin Cui	Abuse: PO Benjamin Cui stopped and questioned § 87(2)(b)	
B.POM Steven Hong	Abuse: PO Steven Hong stopped and questioned § 87(2)(b)	
C.POM Benjamin Cui	Force: PO Benjamin Cui used physical force against § 87(2)(b)	

Synopsis

At approximately 4:30 PM on December 24, 2004, PO Benjamin Cui and PO Steven Hong stopped and questioned § 87(2)(b) on the corner of Norfolk Street and Delancey Street, in Manhattan (Allegations A and B). § 87(2)(b) refused to provide the officers with his identification, and when the officers tried to stop § 87(2)(b) from walking away, § 87(2)(b)'s friend, stood in between PO Cui and § 87(2)(b) preventing PO Cui from assisting PO Hong. PO Cui used physical force to move § 87(2)(b) out of the way (Allegation C). § 87(2)(g)

§ 87(2)(b)

Summary of Complaint

§ 87(2)(b) was interviewed at the CCRB on January 12, 2005. § 87(2)(b) read from a written statement that he prepared before the interview (Enclosure 5). § 87(2)(b) stated that on December 24, 2004, at approximately 4:30 PM, he was walking with his friend, § 87(2)(b) towards the Essex Street subway station on the corner of Norfolk Street and Delancey Street, in Manhattan. As § 87(2)(b) and § 87(2)(b) walked down the steps into the subway station, two police officers, subsequently identified as PO Steven Hong and PO Benjamin Cui, stopped § 87(2)(b).

PO Hong requested § 87(2)(b)'s identification, stating that § 87(2)(b) who is a 6'2" black male, and who was wearing a black jacket and blue jeans during the incident, fit the description of a suspect whom the officers were looking for. § 87(2)(b) stated that he was just leaving Jimmy Jazz, a club in the area, and that the officers were inconveniencing him. § 87(2)(b) stated that if the officers had any questions for him, they should ask the questions right there. PO Hong asked § 87(2)(b) for his identification a second time, but § 87(2)(b) stated that he did not have his identification. PO Hong told § 87(2)(b) to go back up the stairs. § 87(2)(b) did not comply, but stated, "we can go back to Jimmy Jazz and the club owner will tell you that I was there." At this point, PO Hong put his hand on § 87(2)(b)'s shoulder firmly, indicating that he should go up the stairs, and § 87(2)(b) stated, "you're touching me." PO Hong then removed his hand from § 87(2)(b)'s shoulder.

At this time, PO Cui grabbed § 87(2)(b)'s arm and pulled her out from between himself and § 87(2)(b) attempting to move closer to § 87(2)(b). Because § 87(2)(b) saw that § 87(2)(b) was now involved in the situation, he decided to comply with the officers. § 87(2)(b) walked up the stairs and stood next to the building at the top of the stairs. A woman came out of the jewelry store that § 87(2)(b) was standing in front of and indicated to the officers that § 87(2)(b) was not the individual whom the officers were looking for. At this time, PO Hong asked § 87(2)(b) for identification again, and § 87(2)(b) stated that he did not have identification. § 87(2)(b) and § 87(2)(b) left the location (Enclosure 6).

Results of Investigation

§ 87(2)(b)

§ 87(2)(b) was interviewed at the CCRB on February 18, 2005. She could not recall the exact date of the incident, but stated that at the time and place of the incident, she was entering the subway station on the corner of Norfolk Street and Delancey Street, in Manhattan, with § 87(2)(b). Two officers, subsequently identified as PO Hong and PO Cui, stopped § 87(2)(b) and asked him for his identification. § 87(2)(b) stated that he did not have his identification, and asked the officers why they wanted to see his identification. PO Hong stated that § 87(2)(b) fit the description of an individual whom the officers were looking for. PO Hong asked § 87(2)(b) for identification again and § 87(2)(b) stated again that he did not have any identification. § 87(2)(b) and § 87(2)(b) continued down the stairs, and PO Cui said, "well, let's just arrest him."

At this time, PO Cui grabbed § 87(2)(b)'s forearm and pulled her out from in between himself and § 87(2)(b). § 87(2)(b) then began to cooperate with the officers, and he walked up the stairs with the officers. The officers had § 87(2)(b) stand against the wall of a jewelry store on the corner of Delancey Street and Norfolk Street. A woman came out of the jewelry store and said, "that's not him." At this time, the officers told § 87(2)(b) he was free to go (Enclosure 7).

Officer Identification

§ 87(2)(b) identified PO Benjamin Cui by his shield number (Enclosure 7). PO Cui's memo book for December 24, 2004, indicated that he was working with PO Steven Hong (Enclosure 10). In addition, PO Cui prepared two Stop, Question and Frisk reports for two individuals who match the physical descriptions of § 87(2)(b) and § 87(2)(b) on the incident date and time (Enclosure 12). Subsequently, in their respective CCRB interviews, PO Cui (Enclosure 11) and PO Hong (Enclosure 9) admitted to stopping and questioning § 87(2)(b) and § 87(2)(b) on the incident date.

Officer Statements

PO Steven Hong

PO Steven Hong's Memo Book Entries

PO Steven Hong's memo book indicates that on December 24, 2004, his exact tour of duty was 15:25-23:35. At 16:05, there was a report of a 10-32 at Solid Gold, a jewelry store located at 132 Delancey Street. At 16:06, he was 10-84 at the location. At 16:15, he stopped one male and one female. The 6'0" black male was wearing a black jacket, blue jeans and a baseball cap. He fit the description of the perpetrator. The male was uncooperative, and he refused to follow police orders; he refused to stop, and continued to walk down into the train station. The 5'0" female black prevented PO Cui from stopping the possible perpetrator. At 16:20, the show-up produced negative results from the storeowner. At 17:15, two UF-250s were prepared: 93 C and 93 Q (Enclosure 8).

PO Steven Hong's CCRB Statement

PO Steven Hong was interviewed at the CCRB on March 25, 2005. He stated that on December 24, 2004, at 4:06 PM, he and his partner, PO Benjamin Cui, responded to a report of a robbery in progress at Solid Gold, a jewelry store located at 132 Delancey Street, in Manhattan. The storeowner gave the officers a description of the perpetrator: black, male, 6'2," 200 lbs., black jacket, blue jeans and a baseball cap. PO Hong and PO Cui began conducting a canvas, and at 4:15 PM, they witnessed an individual who matched the description of the perpetrator, subsequently identified as § 87(2)(b) entering the subway at the corner of Norfolk Street and Delancey Street, in Manhattan.

PO Steven Hong approached § 87(2)(b) as he was walking down the stairs and asked him to stop. § 87(2)(b) asked why the officers wanted him to stop. PO Hong told § 87(2)(b) that he matched the description of someone whom the officers were looking for, and he asked § 87(2)(b) for his identification. § 87(2)(b) refused to provide his identification and accused PO Hong of harassing him. PO Hong stated that he needed § 87(2)(b) to come back up the stairs and go back to the jewelry store with him, but § 87(2)(b) tried to keep walking down the stairs, repeating that he believed that PO Hong was harassing him. At this time, PO Hong stepped below § 87(2)(b) on the stairs, and put his body in front of § 87(2)(b) preventing § 87(2)(b) from going further down the stairs. There was a female black with § 87(2)(b) subsequently identified as § 87(2)(b) who was standing in between PO Cui and PO Hong, preventing PO Cui from assisting PO Hong. However, PO Hong did not pay close attention to § 87(2)(b) because he was occupied with § 87(2)(b).

PO Hong became more suspicious of § 87(2)(b) when § 87(2)(b) refused to provide identification a second time and continued to try to walk past PO Hong. PO Hong grabbed § 87(2)(b)'s jacket to prevent him from walking past him. At this time, § 87(2)(b) was standing in front of PO Cui, preventing him from assisting PO Hong, and PO Cui pulled § 87(2)(b) out from in between himself and § 87(2)(b) by grabbing the sleeve of her shirt. PO Cui moved in front of § 87(2)(b) and at this time, § 87(2)(b) became compliant. PO Cui did not make physical contact with § 87(2)(b). § 87(2)(b) walked up the stairs with the officers and stood in front of the jewelry store. The storeowner stated definitively that § 87(2)(b) was not the perpetrator. PO Hong asked § 87(2)(b) and § 87(2)(b) for identification again, so that he could indicate whom he stopped on the UF-250 form, but both § 87(2)(b) and § 87(2)(b) refused to provide identification and left the incident.

location. PO Hong stated that the interaction with § 87(2)(b) and § 87(2)(b) lasted five minutes. PO Cui prepared UF-250 forms for both individuals (Enclosure 9).

PO Benjamin Cui

PO Benjamin Cui's Memo Book

PO Benjamin Cui's memo book indicates that on December 24, 2004, his exact tour of duty was 15:00-23:35. He was assigned to the 7th Precinct Sector D, and was partnered with PO Hong. At 16:05, there was a report of a 10-32 at Solid Gold, located at 132 Delancey Street. At 16:06, PO Cui was 10-84 at the location. At 16:15, PO Cui stopped a male and a female at the entrance to the subway. They refused to provide their identification. The male was black, 6'0," 200 lbs., wearing a black jacket, a baseball cap and blue jeans. He was extremely uncooperative, and he refused to step out of the subway stairwell and continued to walk away. He refused to stop. The female intervened and put herself right between the officers and the male. She prevented PO Cui from assisting PO Hong. The witness identification produced negative results. At 17:15, PO Cui prepared two UF-250s (Enclosure 10).

Stop, Question and Frisk Report Worksheets

PO Benjamin Cui completed two UF-250s in regards to stopping and questioning § 87(2)(b). They indicate that PO Benjamin Cui and PO Steven Hong stopped two individuals who refused to provide identification, at 4:15 PM on December 24, 2004, on the corner of Norfolk Street and Delancey Street, in Manhattan. One individual was a petite female black, and the other individual was a 6'0" male black, weighing 200 lbs. The male black fit the description of the perpetrator of a robbery. The worksheets indicate that PO Cui explained to both individuals the reason why they were stopped, and that the duration of the stop was five minutes (Enclosure 12).

PO Benjamin Cui's CCRB Statement

PO Benjamin Cui was interviewed at the CCRB on March 15, 2004. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

After PO Cui and PO Hong approached § 87(2)(b) and asked for his identification, § 87(2)(b) refused to provide identification and continued walking down the steps. PO Cui was behind § 87(2)(b) and PO Hong was in front of § 87(2)(b). § 87(2)(b) matched the description of the suspect whom the officers were looking for, and he refused to give his identification to PO Hong multiple times, while trying to get away from the officers. For these reasons, PO Cui considered § 87(2)(b) a threat to the officers' safety, and moved to assist PO Hong in preventing § 87(2)(b) from entering the subway. At this time, a petite black female, subsequently identified as § 87(2)(b) whom PO Cui had not seen before this time, ran in between § 87(2)(b) and PO Cui, preventing PO Cui from approaching § 87(2)(b). She started screaming, "leave us alone, stop harassing us." PO Cui told § 87(2)(b) to move out of the way, but she kept her body in front of § 87(2)(b) and was pushing with her body against PO Cui, who was trying to move past her to assist PO Hong. PO Cui told her two more times to move out of the way, and she continued to ignore him. The third time PO Cui told her to move, he told her that it was her last warning. When § 87(2)(b) ignored him for the third time, PO Cui grabbed § 87(2)(b) by her sleeve and pulled her out from in between himself and § 87(2)(b). § 87(2)(b) did not fall down, and PO Cui stated that he did not actually make contact with her body, just her clothing. PO Cui moved to assist PO Hong, but he did not make physical contact with § 87(2)(b). § 87(2)(b) became compliant at this time, and he walked up the stairs and back to the jewelry store with the officers (Enclosure 11).

PO Benjamin Cui's CCRB History

PO Cui does not have any substantiated CCRB complaints.

PO Steven Hong's CCRB History

PO Hong does not have any substantiated CCRB complaints.

§ 87(2)(b)'s Criminal Conviction History

§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

§ 87(2)(b)'s Criminal Conviction History

§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Conclusions and Recommendations

The undisputed facts of the case are as follows: on December 24, 2004, at approximately 4:06 PM, PO Cui and PO Hong responded to a larceny in progress at 132 Delancey Street in Manhattan. When they arrived at the location, they were informed by an employee of the jewelry store that the perpetrator was a 6'0" black male, wearing blue jeans, a baseball cap and a black jacket, and that he was approximately 200 lbs. She informed the officers that he had just left the location. The officers began canvassing the area, and at approximately 4:15 PM, they witnessed an individual who matched the description of the perpetrator entering the subway on the corner of Delancey Street and Norfolk Street, in Manhattan.

The individual, subsequently identified as § 87(2)(b), refused to provide identification when PO Hong requested it from him, and he attempted to walk past PO Hong. PO Hong positioned himself in front of § 87(2)(b) and asked for identification again. § 87(2)(b) refused again and attempted to walk past PO Hong. PO Hong grabbed § 87(2)(b) by the jacket to prevent him from walking past him. At this time, another individual, subsequently identified as § 87(2)(b), stood in front of § 87(2)(b) blocking PO Cui from assisting PO Hong. She told the officers to stop harassing § 87(2)(b). PO Cui grabbed § 87(2)(b) and pulled her out from in front of § 87(2)(b) and moved himself in front of § 87(2)(b) to prevent him from walking past PO Hong. § 87(2)(b) did not sustain injuries as a result of PO Cui pulling her out of the way. § 87(2)(b) became compliant at this time, and walked back to the jewelry store with the officers. The employee of the jewelry store indicated that § 87(2)(b) was not the perpetrator. PO Hong asked § 87(2)(b) and § 87(2)(b) for their identification, so that he could indicate whom he stopped on the Stop, Question and Frisk reports. Both individuals refused to provide identification and left the incident location.

§ 87(2)(g)

Allegation Not Pleaded

§ 87(2)(g)

Allegation A: PO Benjamin Cui stopped and questioned § 87(2)(b)

Allegation B: PO Steven Hong stopped and questioned § 87(2)(b)

On December 24, 2004, at 4:06 PM, PO Benjamin Cui and PO Steven Hong responded to Solid Gold, a jewelry store located at 132 Delancey Street, in Manhattan, after they received a report of a robbery in progress at the location. The employee at the jewelry store described the perpetrator as a 6'0" male black, wearing blue jeans, a black jacket and a baseball cap. The officers began a canvass of the area, and at 4:15 PM, they witnessed § 87(2)(b) who is a 6'2" male black, and who was wearing blue jeans, a black and brown jacket, and a baseball cap, entering the subway less than a block away from the jewelry store.

§ 87(2)(g)
[REDACTED]

Allegation C: PO Benjamin Cui used physical force against § 87(2)(b)

On December 24, 2004, at approximately 4:15 PM, PO Cui and PO Hong stopped § 87(2)(b) as he was entering the subway on the corner of Norfolk Street and Delancey Street. All parties concur that PO Hong informed § 87(2)(b) that he matched the description of a suspect of a crime whom the officers were looking for, and that PO Hong asked § 87(2)(b) for identification. § 87(2)(b) refused to provide identification and tried to walk by PO Hong. At this time, PO Cui attempted to assist PO Hong in preventing § 87(2)(b) from walking away, but § 87(2)(b) stood in between PO Cui and § 87(2)(b) preventing PO Cui from assisting PO Hong. PO Cui grabbed § 87(2)(b) by her arm and pulled her out from in between himself and § 87(2)(b) and moved to assist PO Hong.

§ 87(2)(b) was preventing PO Cui from helping his partner stop § 87(2)(b) who was acting uncooperative, § 87(2)(g)
[REDACTED]

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: